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Adequacy of the international legal framework on violence against women

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, submitted pursuant to Assembly resolution 71/170.

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Report of the Special Rapporteur on violence against women, its causes and consequences on the adequacy of the international legal framework on violence against women

Summary

In the present report, the Special Rapporteur on violence against women, its causes and consequences provides an account of her activities since her previous reports. Following a discussion on the adequacy of the international legal framework on violence against women, the mandate holder reports on the answers she received from women's rights regional mechanisms and the Committee on the Elimination of Discrimination against Women and presents responses received from civil society following her call for input on the issue. She then analyses the adequacy of the international legal framework on violence against women, addressing the debate on the merits of a new legal instrument.

Contents

		Page
I.	Introduction	4
II.	Activities of the Special Rapporteur	4
	A. Reporting and initiatives	4
	B. Visits and communications	5
	C. Cooperation	5
III.	Debate surrounding the adequacy of the legal framework on violence against women	6
	A. Views from independent global and regional mechanisms	7
	B. Views from civil society	9
	C. Special Rapporteur's perspective on the adequacy of the international legal framework	17
IV.	Conclusions and recommendations	19

I. Introduction

1. The Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, submits the present report pursuant to General Assembly resolution 71/170.

2. In section II, she summarizes the activities carried out since her previous report to the General Assembly, up to July 2017.

3. In section III, she introduces the debate surrounding the adequacy of the legal framework on violence against women and (a) recalls views received from the global and regional independent women's human rights mechanisms on the adequacy of the international framework; (b) provides a summary of views received from over 220 stakeholders following a call for submissions; and (c) provides an analysis of her perspective on this debate. In section IV, the Special Rapporteur draws her conclusions on the adequacy of the international framework on violence against women, followed by her recommendations on possible ways forward.

II. Activities of the Special Rapporteur

A. Reporting and initiatives

4. On 17 March 2017, within the context of her participation in the sixty-first session of the Commission on the Status of Women, the Special Rapporteur met with the Secretary-General, together with the Chair of the Committee on the Elimination of Discrimination against Women, the Chair of the group of experts of the Council of Europe on action against violence against women and domestic violence, a member of the Working Group on the issue of discrimination against women in law and in practice and the coordinator of thematic monitoring at the Inter-American Commission on Human Rights. Within the context of that meeting, the mandate holders addressed the key issue of cooperation between independent international and regional mechanisms on women's rights and violence against women and proposed the institutionalization of such cooperation. The proposal was supported by the Secretary-General, who entrusted his cabinet to work with the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) on its operationalization. At the thirty-fifth session of the Human Rights Council, on 12 June 2017, the Special Rapporteur presented her report on a human rights-based approach to integrated services and protection measures on violence against women, with a focus on shelters and protection orders (A/HRC/35/30).[1] The mandate holder recommended that States develop additional indicators on the implementation of target 5.2 of the Sustainable Development Goals, on the elimination of violence against women, including indicators on femicide, and shelters and protection orders.

5. The Special Rapporteur also participated in the Human Rights Council annual day of discussion on the human rights of women, addressing the panel on "Accelerating efforts to eliminate violence against women: engaging men and boys in preventing and responding to violence against women and girls". Furthermore, the mandate holder organized a side event to further discuss the findings of her thematic report on shelters and protection orders and took part in various other side events. From 26 to 30 June 2017 in Geneva, the mandate holder participated in the twenty-fourth annual meeting of special procedures mandate holders. On 10 July

[1] www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21733&LangID=E.

2017 in Brussels, the mandate holder took part in the kick-off conference of the European Union/UN-Women regional programme on violence against women.

B. Visits and communications

6. Since the previous reporting period, the Special Rapporteur visited Israel from 12 to 22 September 2016, the Occupied Palestinian Territory/State of Palestine from 17 to 22 September 2016, Argentina from 14 to 21 November 2016 and Australia from 13 to 27 February 2017. The Rapporteur plans to undertake an official visit to the Bahamas in 2017. She has also received an invitation for a visit to Bulgaria and sent a visit request to Canada in April 2017.

7. During the period under review, the Special Rapporteur addressed, including jointly with other mandate holders, a total of over 40 communications relating to issues falling within the scope of her mandate.

C. Cooperation

8. During 2015 and 2016, the Rapporteur and the Committee on the Elimination of Discrimination against Women established a formal collaboration, with a view to updating general recommendation No. 19 (1992) on violence against women.[2] In that respect, on 30 October 2016, the mandate holder participated in Geneva in a meeting of the Committee working group on updating general recommendation No. 19; on 2 and 3 February 2017, she participated in a follow-up meeting of the working group in London. On 18 July 2017, she participated in the part of the sixty-seventh session of the Committee in which general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, was adopted.

9. On 4 April 2016, the Special Rapporteur sent a letter to the Executive Director of UN-Women, Phumzile Mlambo-Ngcuka, to further explore with UN-Women, in its capacity as administrator of the trust fund for victims of violence against women, ways and means of cooperation between the mandate and the trust fund, with a view to maximizing efforts and actions to push for the implementation of norms and standards related to violence against women, as envisaged in the trust fund's founding resolution.[3]

10. That resolution incorporates cooperation with the mandate of the Special Rapporteur, with the fund being requested "in undertaking any relevant activities, to cooperate closely with the relevant United Nations organs and bodies, among others the Special Rapporteur of the Commission on Human Rights on violence against women, in order to ensure that its activities form part of the system-wide efforts of the United Nations to eliminate violence against women". Given the scope of the mandate, including its task to seek and receive information on violence against women from other specialized agencies, to respond effectively to such information and to recommend measures, ways and means at the local, national, regional and international levels to eliminate violence against women and remedy its consequences,[4] the Rapporteur sent a letter to UN-Women as administrator of the trust fund, in which she sought to establish a close collaboration as envisaged in the fund's founding resolution. On 7 July 2017, the mandate holder issued a joint

[2] It is the first example of such formal collaboration between a treaty body and a special procedures mandate holder.

[3] General Assembly resolution 50/166.

[4] See A/HRC/RES/16/7, para. 3 (a) and (b).

statement, together with the Committee on the Elimination of Discrimination against Women, the Working Group on the issue of discrimination against women in law and in practice and the Inter-American Commission on Human Rights Rapporteur on the rights of women, on the review of Sustainable Development Goal 5 by the high-level political forum on sustainable development. The statement focused on Sustainable Development Goal 5 and on how that process should integrate the findings and recommendations of international and regional women's rights mechanisms.

III. Debate surrounding the adequacy of the legal framework on violence against women

11. The mandate holder started her tenure on 1 August 2015 and acquired the work carried out by her predecessor on the adequacy of the legal framework on violence against women (A/HRC/26/38, A/69/368 and A/HRC/29/27), in particular, her proposal to "examine the normative gaps within the existing international binding legal frameworks, and address more specifically the legal gaps in protection, prevention and accountability in respect of violence against women". The current Special Rapporteur presented the report of her predecessor to the General Assembly and decided to continue discussing this question by inviting all stakeholders to send their views and perspectives on the adequacy of the current legal framework on violence against women.

12. At her preliminary assessment to the Human Rights Council, the mandate holder presented her vision as set out in A/HRC/32/42, and highlighted that there was a lack of full acceptance and incorporation of those international and regional human rights standards on violence against women and that additional specific measures were needed to address that normative challenge and the implementation gap. She explained her view on fragmentation of the work of the United Nations and regional instruments on violence against women and called for stronger cooperation between mechanisms and the joint use of global and regional instruments to employ synergies between them. The Special Rapporteur also believed that a legally binding framework on women's rights and violence against women was provided by the Convention on the Elimination of All Forms of Discrimination against Women and general recommendation No. 19 and its update, general recommendation No. 35, the Declaration on the Elimination of Violence against Women and regional instruments on violence against women.[5]

13. Given this premise, the Special Rapporteur invited global and regional human rights mechanisms that monitor the implementation of international and regional instruments on violence against women to send their views and inputs on the need for a new instrument on violence against women and the existing gaps and shortcomings in the implementation and incorporation of the current legal framework. Their responses were collected and summarized in the report to the General Assembly. In the preparation of the present report, the Special Rapporteur invited all other stakeholders, including States, non-governmental organizations (NGOs), other special procedures mandate holders and treaty bodies, as well as national human rights institutions and members of academia, to send their views and inputs in response to a call for submissions on this issue that was published on her official web page.[6] The Rapporteur indicated that, after collection of their responses, a comprehensive assessment would be carried out on the adequacy of the international framework on violence against women and possible actions needed.

[5] www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20183&LangID=E.

[6] www.ohchr.org/EN/Issues/Women/SRWomen/Pages/InternationalLegalFramework.aspx.

14. Within her call for submissions, the Special Rapporteur asked whether there was a normative gap in the policies or in the implementation of policies on violence against women and whether a separate legally binding treaty with its own monitoring body was needed.

A. Views from independent global and regional mechanisms

15. The Committee on the Elimination of Discrimination against Women considers that, although the Convention on the Elimination of All Forms of Discrimination against Women does not explicitly have a provision on gender-based violence against women, its general recommendation No. 19 became a source of and inspiration for various international and regional documents, including the Declaration on the Elimination of Violence against Women. As the Committee's authoritative interpretative tool, general recommendation No. 19 reflects the Committee's position that violence against women constitutes gender-based discrimination in the meaning of article 1 of the Convention. Since the adoption of the recommendation in 1992, States parties have not challenged its validity or competence. It should be noted that, under the recommendation, in conjunction with articles 1, 2 and 5 of the Convention, redress for alleged violations has been adequately addressed by the Committee. Therefore, it is the Committee's view that the Convention has a provision on gender-based violence against women in its present form. The Committee further mentioned its work on the update of general recommendation No. 19 through the codification of positive developments that have happened since its adoption. The Committee notes that the creation of a new convention is contradictive from the viewpoint of States parties that have urged the Committee to streamline its activities.

16. The committee of experts on the follow-up mechanism to the implementation of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women considered that the creation of a protocol should be supported, as a supplementary instrument to the Convention on the Elimination of All Forms of Discrimination against Women, because it would strengthen the work already done by the Committee and promote the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, without weakening the implementation of either treaty. Approval of the protocol would strengthen the work done by international and regional women's human rights mechanisms.

17. The Inter-American Court of Human Rights stressed the importance of dialogue with special procedures mechanisms in order to strengthen the development and effective implementation of human rights standards around the world. The Court noted that it had developed a significant body of case law on all forms of violence against women and relevant international standards on sexual violence, as well as on violence against women as a form of torture.

18. The group of experts of the Council of Europe on action against violence against women and domestic violence stressed that the current international political climate and economic situation were not conducive to the drafting of an additional instrument on women's rights, and that creating such an instrument would pose a foreseeable risk of falling behind the existing standards established by the Committee and its general recommendation No. 19, let alone more advanced standards set out in the Convention on Preventing and Combating Violence against Women and Domestic Violence. It believed that the introduction of another instrument at the current stage, albeit at the global level, would be premature and pose a challenge to the implementation of existing norms and standards. Priority

should be accorded to ensuring the full implementation of the treaties and other instruments that already existed, rather than creating new standards.

19. The Association of Southeast Asian Nations (ASEAN) Intergovernmental Commission on Human Rights considered that there was no need for a separate legally binding treaty on eliminating violence against women. The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children believed that it was not necessary to have a separate legally binding treaty focused on violence against women with its own monitoring body because of the existence of the Convention on the Elimination of All Forms of Discrimination against Women and general recommendation No. 19, as such a treaty would compete for attention and resources. The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children indicated that reporting to another monitoring body would constitute an additional burden on Governments in terms of resources. It noted that the consolidation and institutionalization of the Convention would be the best strategy, instead of imposing another treaty that might undermine the power and authority of the Committee.

20. The Special Rapporteur on the rights of women in Africa considered that, in theory, an international treaty on violence against women was needed, but that some counterarguments should be taken into account. Prime among them was that the real challenge in dealing with the issue of violence against women did not lie in legal inadequacies but rather in implementation. Another argument against a global treaty on violence against women was that some regions, including the Americas, Africa and Europe, could rightfully claim that there was no normative gap. In that regard, a campaign to develop, ratify and implement an additional treaty mechanism would divert efforts and resources that would be better spent on strengthening the existing regional systems of protection. Such an objection can be countered, however, by the fact that Asia and Oceania did not have the benefit of regional protection. She also considered that, if a global treaty on violence against women prescribed clear and legally binding enforcement mechanisms at both the international and national levels, it could create some useful harmony to address the fragmentation of policies and legislation to address gender-based violence.

21. The Working Group on the issue of discrimination against women in law and in practice believed that it was neither necessary nor feasible at the present time to invest energy and resources in the development of a new stand-alone convention on violence against women. It would instead be advisable to invest the limited resources available in measures to strengthen existing mechanisms. The Working Group noted that the Committee addressed the issue of violence against women systematically in all its constructive dialogues with State parties, which were subsequently reflected in its concluding observations. In addition, general recommendation No. 19 had provided effective international substantive and normative guidance on the issue. Updating it would present a valuable opportunity to strengthen that guidance. The Working Group was of the view that transforming the recommendation into a legally binding protocol could be, at some point and resources permitting, a welcome development.

22. The Special Rapporteur notes that, while the Committee on the Elimination of Discrimination against Women, the group of experts of the Council of Europe on action against violence against women and domestic violence, the ASEAN Intergovernmental Commission on Human Rights and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children did not endorse the proposal for a new stand-alone instrument on violence against women, the Special Rapporteur on the rights of women in Africa encouraged the creation of a new treaty. At the same time, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women and the Working Group on

the issue of discrimination against women in law and in practice would support a supplementary protocol to the Convention on the Elimination of All Forms of Discrimination against Women as a long-term solution.

B. Views from civil society

23. Following her call for inputs, the Special Rapporteur received 291 submissions from civil society. The large number of responses received from civil society organizations highlights the remarkable engagement of civil society on this issue, with a variety of perspectives and particular concerns pointed out by some respondents.

24. Even though civil society organizations didn't express a unitary perspective on the current debate on the adequacy of the international legal framework on violence against women, the Special Rapporteur could identify some recurrent concerns, which have been grouped under the following categories: (a) support for a new stand-alone treaty with a new separate monitoring body; (b) opposition to such a treaty and proposals to strengthen existing instruments; (c) support for the strengthening of the current legal framework and mechanisms with the possible adoption of a new optional protocol under the Convention as a long-term solution; and (d) other innovative proposals.

25. In terms of general consideration of the submissions received from civil society organizations, the Special Rapporteur highlights that, primarily, such organizations showed that they were concerned about what some consider the "soft law" character of the current legal framework on violence against women, combined with the fragmentation of the current legal framework, several substantive gaps and inconsistencies present in the current instruments, and the fact that their implementation remains weak, particularly at the national level. Concerning the opportunity to create a new legal instrument, while the idea was endorsed by a majority of civil society organizations, several submissions highlighted that there were ways of addressing some issues and introducing new practical measures without the need for a new treaty. Others pointed out that there was a considerable political risk in seeking to negotiate a new treaty, which might encompass lower standards than those already widely accepted. Finally, among the main issues identified by civil society, there was a need for States to adequately resource measures for the prevention of, protection against and prosecution of perpetrators, as well as for reparations for victims and survivors.

26. Civil society organizations also expressed concern at the weaknesses of the current legal framework, the "added value" of a new treaty, practical issues that should be emphasized in a new treaty, sensitive issues relating to its negotiation and, finally, practical options for improving the implementation of the prohibition of gender-based violence which would not necessarily involve negotiating a new treaty.

27. Regarding the adequacy of the current legal framework, civil society organizations highlighted that there was a need for a total reconceptualization of human rights to include women's rights and to transmit to the world a powerful message about the unacceptability of gender-based violence.

28. Several organizations stressed that it was important to situate analysis on violence against women within a broader gender equality context across the range of gender-based discrimination, and that therefore the Convention was still framing the issue on the basis of the best interpretative approach. According to those sources, it was a priority to focus on the structural issues — personal status law, women's economic marginalization and inequality — that permitted violence

against women to persist, and it would be inconsistent to address them in isolation from gender discrimination more generally.

29. Civil society organizations also claimed that the current framework failed to address violence against women in specific contexts such as violence against women in conflict; situations of "invisible violence", namely economic violence and psychological violence against, for instance, women belonging to minority groups; and the specific experiences of children exposed to violence against women. They also pointed out that, among the substantive issues that were missing in the current legal framework, there was the need to create an intersectionality of approach, including the initiatives by the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights, the Human Rights Council and the Committee on the Elimination of Racial Discrimination.

30. In addition, several organizations highlighted that there was a normative gap at the international level and persistent obstacles to the protection of women subjected to gender-based violence, for example the normalization of sexual violence against women or an emphasis on preserving marriages and family rather than addressing men's impunity for family violence. Concern was expressed about the spiral of fundamentalism and extremism that was currently contributing to exacerbating violence against women.

31. Civil society organizations also stressed that there should be a better global standard of monitoring, as well as global indicators. Data gathering should include an assessment of the number of crimes reported to police and the number of women surveyed who reported that they had been victimized, arrested and sentenced, and that such indicators should be time bound.

32. Civil society organizations also pointed out that States needed a clear understanding of their obligations with regard to non-compliance and more technical assistance for better implementation. Furthermore, several submissions highlighted that the rules on exhaustion of domestic remedies made it hard for women to seek justice, as exhaustion of domestic remedies could pose problems when a State's law and policies were inherently arbitrary and unjust towards women. In general, civil society organizations made it clear that rules against gender-based violence had to be settled in a way that all spheres of States clearly understood it, including the economic and policy world, and that the focus should be on bottom-up implementation.

33. Funding was also reported as a key issue. Governments were not willing to fund initiatives, and often pleaded a lack of resources when challenged about poor performance with regard to implementing the rules on violence against women.

34. Civil society organizations called for more support for women's organizations on the ground, underlining that women human rights defenders faced daily threats and harassment, and needed greater protection. At the same time, more regulations addressing violence against particular groups of women, such as women belonging to minority groups; migrants; lesbian, gay, bisexual and transgender persons; elderly women; women with disabilities; and widows, were also supported.

35. Civil society organizations further expressed concern over insufficient support measures available for survivors of violence, such as protection measures and services. Shelters, health care and psychological support remained inaccessible. As highlighted by the Special Rapporteur in document A/HRC/35/30, the lack of systematic data collection on gender-based violence against women and femicide was a serious obstacle to addressing violence against women. Data collection was a crucial step in promoting advocacy at the national level to combat gender-based violence.

36. Civil society organizations noted that regional mechanisms were frequently adopted with the purpose of addressing the incorporation gap between international and national norms and were often aimed at supplementing international provisions with a specificity that reflected the regional context. Yet, some organizations reported that such a noble objective had not always materialized.

37. Moreover, some organizations noted that there was a lack of strong institutionalized follow-up measures aimed at ensuring that the relevant recommendations of women's rights mechanisms were implemented at the national level. Furthermore, in the ASEAN region, the mandate of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children was limited to promoting international laws and standards, rather than ensuring enforcement and implementation by States.[7]

38. Several civil society organizations proposed that any new measures taken to accelerate the prevention and elimination of violence against women should build upon existing legal obligations and the international commitment of States under the Convention to take measures to eliminate gender-based violence against women and comprehensively address gender-based violence against women, including any normative and implementation gaps in domestic laws and policies.

39. Finally, civil society organizations stressed that the majority of efforts and resources should be on incorporating and implementing international law and standards and be focused on domestic strategies, in particular on measures to strengthen the capacity of national institutions and national human rights institutions.

40. In relation to Convention norms and standards, civil society organizations highlighted that international instruments should focus on further clarifying State obligations to reflect the current complexities of global political and economic systems that had contributed to the perpetuation of gender-based violence against women, as well as acted as a barrier to eliminating gender-based violence against women. The increasing incidence of gender-based violence against women committed by entities such as corporations and non-State military actors, owing to the power imbalance caused by the prevalence of neo-liberal economic policies and increasing armed conflict, should be reflected in instruments of the Convention. Civil society organizations further suggested that the Committee should expand upon the definition of non-State actors and identify the scope of obligations imposed upon them. Extra focus should also be dedicated to spelling out more detailed State obligations concerning laws and policies aimed at eliminating gender-based violence against women. For instance, common references to substantive, evidentiary and procedural laws that represented an obstacle for survivors of violence seeking justice should be outlined. In reflecting national practices, the Committee could also draw upon good practices of States in implementing legal, policy or programmatic approaches and solutions in addressing gender-based violence against women. Finally, civil society organizations agreed that the updating of general recommendation No. 19 by the Committee provided an opportunity for such synergies.

41. A comparatively large majority of the civil society organization interventions expressed support for a new treaty. Yet, only a few provided detailed arguments in support of such a treaty. In fact, less than 50 per cent provided exhaustive reasons.

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[7] Solidarity for Asian People's Advocacy Task Force on ASEAN and Human Rights, *Four Years on and Still Treading Water: A Report on the Performance of ASEAN Human Rights Mechanism in 2013* (Asian Forum for Human Rights and Development, 2013).

1. Civil society organizations supporting a new stand-alone treaty with a new separate monitoring body

42. Concerning those civil society organizations submissions supporting a new stand-alone treaty with a new separate monitoring body, among the main arguments regarding the need for a new global treaty on violence against women were the need to close the normative gap, the lack of a legally binding definition of gender-based violence against women and the necessity for a global legally binding standard and universal language to reflect the global nature of the problem. Several arguments highlighted how "violence against women is the most widespread human rights violation on Earth" and that "a global phenomenon should have a global and specific response". Civil society organizations also called for the production of a report on global progress and strategic development, as "violence against women is currently a theme rather than an objective" and needed to be addressed as a global priority.

43. Several civil society organizations considered that violence against women was not expressly addressed by the Convention and that, because of this, there was a need for a hard-law instrument to address that issue. While recognizing the importance of general recommendation No. 19, many expressed concern about the soft-law character of the recommendation, highlighting that, without hard law on the matter, Governments were able to choose which aspects of the prohibition and which aspects of the right to a remedy and reparation they would take up. "Although soft laws may be influential in developing norms, their non-binding nature effectively means that States cannot be held accountable for violations." In addition, according to some civil society organizations, the current legal instrument looked at violence against women as a form of discrimination, but did not reflect victims' trauma experiences resulting from actual physical violence, which could be considered as torture. That led to complexity in legal and political strategies that a new treaty could address. Many civil society organizations therefore urged adoption of a new treaty, which would be "specifically on violence against women, comprehensive and legally binding" and reflect "uniformity, specificity and state accountability".

44. Some civil society organizations endorsing the idea of a new treaty also proposed the creation of a new international treaty monitoring body and suggested that it could be either a subcommittee of the Committee on the Elimination of Discrimination against Women or an entirely new treaty body. They highlighted that in any case, however, the Committee needed more resources in terms of time and human resources.

45. Regarding the intrinsic added value of a new treaty, civil society organizations highlighted that it would also help to create more political will with regard to violence against women. They added that any new treaty should adopt a comprehensive, survivor- and human rights-focused approach across all branches of domestic law and practice.

46. Civil society organizations considered that the details of States' "respect, protect, fulfil" obligations should be openly spelled out, including with clear parameters for showing when there was a violation of human rights. There was also a need for specific language to highlight the responsibility of States for the actions of non-State actors.

47. Civil society organizations added that a new treaty could make clear the necessity to ensure consistency across different domestic legal regimes. In some States, domestic violence might be a criminal offence, but it was still intrinsically

accepted through other procedures, such as mediation and conciliation in family law proceedings.

48. Concerning the process of negotiating a new treaty, civil society organizations highlighted that such a treaty should include a global consultation with survivors and a fund to ensure financial capacity-building for victims. The implementation of a new treaty should be carried out in consultation with victims and civil society groups, and it was important to ensure that women's organizations had a strong role in the negotiations. As mentioned, support for women human rights defenders and women's civil society organizations needed to be integrated into any new legal instrument, requiring States to consult with women's organizations on all aspects of addressing violence against women. Concretely, support to civil society should be included in the new instrument, which should also require the mandatory inclusion of women in all international meetings and agreements, especially peace talks and treaty negotiations. States should also fund women's NGOs in a sustainable way, including by providing support to local women's organizations. Civil society organizations underscored that States should allocate sufficient resources (at least 1 per cent of gross domestic product), making reference to the costs of violence against women and the benefits of investing in initiatives concerning such violence. They added that States also needed to have gender budgeting with ring-fenced spending for the delivery of services and gender-equal education.

49. In that regard, civil society organizations stressed the importance of having a document that was legally binding and that clearly delineated the responsibilities of the sovereign bodies with regard to providing reparation for and preventing gender-based violence. In particular, prevention of gender-based violence must be promoted to a *jus cogens* principle in order to build momentum around efforts related to protecting women and girls from violence. Such a document needed to address gender stereotypes and stigma attached to victims, and violence against women ought to be addressed by challenging its root causes, such as poverty, disability and vulnerability.

50. As previously highlighted, many civil society organizations stated that particular importance should also be given to improving implementation strategies and monitoring regimes: there should be a monitoring of State practice in implementing the principles on violence against women as a human rights issue (prevention, prosecution, protection and policy). This monitoring could be carried out by independent organizations engaging with an international treaty body. A treaty could also require States parties to create or nominate a national independent monitoring body on violence against women, which would include frameworks for respective responsibilities in federal States with sufficient resources and the ability to adjudicate cases of violence against women and girls. The treaty could establish a new global gender observatory or international watch centre. It should include a requirement for States to accept more country visits as part of monitoring, as well as ensure consultation with survivors as part of the reporting process and monitoring. Furthermore, more importance should be given to ensuring improved data collection and including a requirement for States to disseminate reports. According to some civil society organizations, any new treaty body should have the power to make general recommendations.

51. With a view to guaranteeing solid implementation, any future legal instrument should also be accompanied by a well-funded and resourced ratification campaign and build on women's agency rather than a protectionist approach. In addition, such an instrument should address non-State actors such as businesses, enterprises and corporations.

52. Some organizations highlighted that any new instrument should also promote communication for development and technology for development programmes and require States to establish a "femicide watch".

53. Another key aspect was secondary protection for women and girls after violence had taken place to avoid further violence and secondary victimization. In that regard, there should be accessible shelters and durable housing solutions, especially for indigenous women and women in rural areas. In addition, the reception of refugee and migrant women needed to be in facilities which were safe (where they would not be mixed with men and therefore in danger).

54. Civil society organizations underlined that boys and men should be addressed in the treaty as both perpetrators and potential allies for change. In addition, the correlation of violence against women with violence against children, whether boys being witnesses to domestic violence against their mothers or children of all gender identities being subjected to corporal punishment, needed to be made clear and solutions needed to be part of the treaty.

55. Finally, some organizations underscored that any new treaty would also need a confidential complaints procedure that protected victims and ensured mandatory reporting and documentation of complaints and the provision of services, resources and reparation.

2. Civil society organizations opposing a new stand-alone treaty on violence against women and proposing the strengthening of existing instruments

56. With regard to arguments against the creation of a new treaty and proposals to strengthen the existing instruments, several submissions highlighted that a new treaty was "not necessary or wise at present; instead political will and resources should be directed towards full implementation of existing international and regional standards". Several civil society organizations suggested that it would be better to strengthen existing obligations than take the risk of a new negotiation; the effort of lobbying for a good treaty would be expensive and would be a huge burden, including on their own resources. These organizations believed that any new additional measures taken should not be aimed at creating new obligations on States to address gender-based violence against women, but should instead serve the purpose of reinforcing the already existing standards and jurisprudence of regional and international treaty bodies on such violence, and enhance the accountability of State responses to the causes and consequences of gender-based violence against women.

57. Civil society organizations supporting this proposal highlighted the existing international human rights law and regional mechanisms, which imposed extensive and detailed obligations on States to address gender-based violence against women. The Convention especially, and the practice of the Committee, had played a vital role in expanding and framing the articulation of violence against women as a human rights violation and as discrimination under the Convention, attaching legally binding State obligations to respect, protect and guarantee fulfilment of those rights. In adopting general recommendation No. 19, the Committee had recognized gender-based violence against women as a form of discrimination and obligated states to adopt legal measures and policies to prevent various forms of such violence, protect survivors of such violence and ensure that its perpetrators were punished.

58. The scope of State obligations to address gender-based violence against women has been further expanded and explained through the adoption of several other general recommendations related to such violence, concluding observations, decisions on individual communications and reports of inquiries regarding

individual States parties. These instruments have also been used by the Committee to regularly address emerging forms of gender-based violence against women and its underlying causes, as well as its link to other forms of discrimination and the context in which gender-based violence against women occurs.

59. Civil society organizations noted that the practice of States had indicated their acceptance of the Convention's coverage of violence in general recommendation No. 19, both tacitly and implicitly. Out of the 109 state party reports submitted under the Convention between January 2010 and March 2015, they noted that 29 States parties had explicitly endorsed general recommendation No. 19, 11 had generally endorsed the general recommendations of the Committee and all reporting States parties had reported on gender-based violence against women in their periodic reports, in line with their obligation under article 18 of the Convention to report on "the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect". Under the communications procedure under the Optional Protocol to the Convention, in 20 out of 24 cases that involved complaints of violence against women, State parties had explicitly endorsed general recommendation No. 19, whereas no State had dissented from the general content of that recommendation. The Convention, Committee practice and State practice had developed a considerable body of conceptual and implementation frameworks in relation to gender-based violence against women under international law, instituting the foundation for global norms and standards on such violence that had influenced domestic law standards and also served as a useful tool for advocacy by women's groups. In addition, the regional mechanisms created to address gender-based violence against women drew upon the norms and standards of the Convention and general recommendation No. 19.

60. Civil society organizations are additionally concerned about the significant burden that a new convention would require, and its potential risk in diverting meaningful energy from implementation of existing norms. Likewise, they raised concerns over the impact of a new legally binding treaty on the well-established body of jurisprudence developed by the Committee in connecting gender-based violence against women with other forms of discrimination. Placing gender-based violence against women within the matrix of discrimination has allowed clarification of new forms of gender-based violence against women and extended the scope of State obligation to protect women against such violence by producing a link between gender-based violence against women and other forms of discrimination that exist as a consequence of inequality within the global political economy, as well as economic, social, cultural and religious contexts. To create a separate treaty would risk isolating gender-based violence against women from the fundamental causes of violence.

61. Currently, global monitoring and advisory bodies such as the Committee and the mandate of the Special Rapporteur already accomplish a significant amount of work in monitoring and supporting State compliance with international standards for gender-based violence against women. It would be challenging to see how another global-level monitoring mechanism could address the critical issues related to violence against women, when in all likelihood, the structure, powers, mandate and resources of such a mechanism would be analogous to those of the current global bodies whose successful impact and engagement with member States depend on various factors, including political will, the competition for scarce resources at the country level, the determinants of human rights-compliant culture that exist in that State and other sociopolitical factors.

3. Civil society organizations supporting a new optional protocol under the Convention

62. Another group of civil society submissions supported the argument for strengthening the current legal framework and mechanisms with possible adoption of a new optional protocol under the Convention as a long-term solution. In particular, civil society organizations wondered if using the updated general recommendation No. 19 (general recommendation No. 35), together with adopting an optional protocol specifically on violence against women, should not be considered as the best option to strengthen efforts to combat violence against women. This group expressed overlapping arguments with the group opposing a new stand-alone treaty on violence against women.

4. Other innovative proposals by civil society organizations

63. Further innovative proposals offered by civil society organizations included using the Sustainable Development Goal target on gender-based violence as a method of accountability. Questions arose about the Committee being able to more intensively monitor the implementation of general recommendation Nos. 19 and 35, using its own existing legal powers, even to create a subcommittee on violence against women.

64. According to others, the United Nations and States should prioritize publicity around existing Committee general recommendations, United Nations resolutions and existing mechanisms. In addition, the Committee could place more emphasis on violence against women in its monitoring and concluding observations and follow-up processes. Also, additional resources would enable the Committee to use its inquiry procedure more often and realize its potential to achieve systemic change within State practice, and prioritize publicity about Committee processes when domestic remedies fail.

65. Some organizations stated that the Committee could require national action plans on violence against women, which States could assess in the context of their periodic monitoring by the Committee, which could be done in cooperation with the special procedures mandate holders, especially the Special Rapporteur. The United Nations should require States to give more detail on violence against women in the treaty bodies common core document. Likewise, States and regional human rights organizations should provide more resources for regional human rights monitoring, and countries outside Europe could ratify the Convention on Preventing and Combating Violence against Women and Domestic Violence. Awareness needs to be raised that this (more detailed) Convention is open to countries outside the Council of Europe. The United Nations and States could increase technical and financial assistance to States and NGOs for monitoring and documenting violence against women and should also do more research on "what works" in eradicating violence against women and share information on evidence-based policies that work. "The United Nations system needs to play a bigger role and hold States accountable."

66. The Secretary-General could be asked to convene a high-level panel on intensifying efforts to prevent and eliminate all forms of violence, especially violence and discrimination against indigenous women and girls. States could increase regional monitoring and interregional cooperation; the Great Lakes treaty processes have been praised in that regard.

67. Some also suggested the creation of a "femicide watch", while others suggested the creation of an international watch centre for violence against women, which would include annual reports on each country's "project implementing and monitoring committees", which could be an international grouping of civil society

organizations. Local monitoring organizations could meet monthly at the district level, and quarterly at the state and national level, to evaluate outcomes and achievements with regard to integrating international and regional standards into monitoring processes and including exchanges and forums between lawyers, women's organizations, government leaders and local communities.

C. Special Rapporteur's perspective on the adequacy of the international legal framework

68. Since the beginning of her tenure, the Special Rapporteur has placed great emphasis on the need to strengthen cooperation between global and regional human rights mechanisms. In particular, she believes that standards developed by regional mechanisms can go into greater detail and provide specific additional protection for victims, as shown by the adoption of the Convention on Preventing and Combating Violence against Women and Domestic Violence in the European region.

69. The Special Rapporteur also recognizes that the current legal framework has not been sufficiently implemented. For example, even where States have incorporated national laws aimed at addressing gender-based violence against women, implementation gaps still remain.

70. The Special Rapporteur believes that law enforcement bodies and national agencies are frequently unequipped to respond to the needs of survivors of gender-based violence against women. Owing to the lack of sensitization and the stigma attached to such violence, survivors often face revictimization during the investigative, judicial and prosecutorial processes. Women who belong to relegated groups face further discrimination.

71. Notwithstanding the existence of international and regional norms and standards on violence against women, the Special Rapporteur observed an overall lack of holistic and comprehensive approaches to combating, preventing and punishing violence against women. As highlighted in her vision-setting report, there is a certain fragmentation of and disconnection between the global and regional instruments and agendas addressing violence against women, such as the Declaration on the Elimination of Discrimination against Women, Security Council resolution 1325 (2000) and subsequent associated resolutions, the Beijing Platform for Action, the Convention on the Elimination of All Forms of Discrimination against Women, and the mechanisms in charge of monitoring their implementation. The implementation of such standards is still ineffective at the national level, owing also to the lack of a coordinated legal and policy framework aimed at addressing gender-based violence.

72. The universal and overall acceptance, incorporation and implementation by States of international and regional instruments are vital steps to consolidate national legal frameworks addressing the elimination of violence against women. This includes not only the ratification of the main international and regional conventions on gender-based violence against women, but also the elimination of all those discriminatory laws and harmful practices which prevent the full enjoyment by women and girls of their human rights.

73. Given this premise, since the beginning of her tenure, the Special Rapporteur has encouraged the debate on possible solutions to the existing fragmentation of policies and legislation addressing violence against women. In fact, one of her main priorities is to contribute to closing the gap in the incorporation and implementation of existing international and regional instruments on violence against women and

providing victims with adequate protection measures and services, including shelters and protection orders, as well as efficient remedies.

74. Furthermore, the Special Rapporteur is deeply convinced that her mandate has an important role to play in promoting collaboration between existing international and regional instruments on violence against women, with a view to accelerating and achieving their full implementation. She considers the strengthening of synergies among the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol thereto, the Beijing Platform for Action, the Declaration on the Elimination of Discrimination against Women, Security Council resolution 1325 (2000), the Sustainable Development Goals and other regional instruments a matter of priority in order to achieve their full implementation and to accelerate the elimination of violence against women.

75. To that end, the Special Rapporteur decided to revive the discussion on the adequacy of international, regional and national legal frameworks to prevent and combat violence against women, including with regard to the creation of a new legal instrument addressing violence against women. In that respect, it is also important to recall important steps that have recently taken place, such as the recent adoption of the Committee's general recommendation No. 35, in which the Special Rapporteur actively participated.

76. Complementary to her participation in the update of general recommendation No. 19 and in the strengthening of cooperation with regional mechanisms, the Special Rapporteur also called, at the beginning of her tenure as mandate holder, for renewed attention to the need for States to consider developing guidelines under the Declaration on the Elimination of Violence against Women to assist in the implementation of the principles set forth in the main international and regional instruments on violence against women.

77. General recommendation No. 35 incorporates the newest developments at the national, regional and international levels and builds upon the growing jurisprudence and work of the Committee, and the work of the Special Rapporteur and other human rights mechanisms. The Special Rapporteur believes that this new instrument will provide in a timely manner additional guidance that is very much needed on steps that should be taken to address gender-based violence in all its forms and to accelerate progress towards its elimination. The mandate holder also welcomes the inclusive participatory process that accompanied the update of general recommendation No. 19.

78. General recommendation No. 35 reiterates and complements the scope of general recommendation No. 19 by not only recalling the standards expressed in the jurisprudence of women's rights mechanisms and the recommendations of the Committee within the past 25 years, but also expanding the range of issues explicitly addressed in the Committee's recommendations.

79. The Special Rapporteur endorses the Committee's interpretation that "State practice and *opinio juris* suggest that the prohibition of gender-based violence against women has evolved into a principle of customary international law". The Committee also emphasizes the role of civil society in eliminating violence against women and the profound social and political impact of the activities of civil society.

80. Building on general recommendation No. 19 and general recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations, general recommendation No. 35 urges States parties to strengthen their obligations with regard to gender-based violence against women, whether territorially or extraterritorially, and calls upon States to adopt several provisions in the areas of

prevention, protection, prosecution and redress that should be implemented with a victim- and survivor-centred approach aimed at avoiding revictimization.

81. This includes immediate risk assessment and protection, including a wide range of protection measures, comprising the issuance and monitoring of eviction, protection orders and adequate sanctions for non-compliance.

82. General recommendation No. 35 also recommends that States "ensure access to financial aid and free or low-cost high quality legal aid,[8] medical, psychosocial and counselling services,[9] education, affordable housing, land, childcare, training and employment opportunities for women victims and survivors, and their family members. Health-care services should be responsive to trauma and include timely and comprehensive sexual, reproductive and mental health services.[10] States should provide specialist women's support services, such as free-of-charge 24-hour helplines, and sufficient numbers of safe and adequately equipped crisis, support and referral centres, as well as adequate shelters for women, their children, and other family members as required".[11]

83. In addition, the Special Rapporteur recalls that the recommendations encourage States to improve data collection and establish a system to regularly collect, analyse and publish statistical data on gender-based violence against women, including on protection orders, dismissal of complaints and conviction rates and reparation.

IV. Conclusions and recommendations

84. **The submissions received from civil society organizations on the adequacy of the existing legal framework represent a great diversity of responses. These views, together with those of the Committee on the Elimination of Discrimination against Women and regional mechanisms, have been an extremely enriching contribution to the debate on the adequacy of the legal framework on violence against women. Almost all submissions emphasized the role of the Convention on the Elimination of All Forms of Discrimination against Women as a dynamic, living instrument that encompasses violence against women as a form of discrimination against women and the progressive interpretation of the Convention through the adoption of successive general recommendations on violence against women by the Committee, as well as other related subjects, such as the core obligations on States to implement the Convention, access to justice (general recommendation No. 33 (2015) on women's access to justice) and the rights of women and girls in conflict and post-conflict situations (general recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations), along with all the other general recommendations. A significant number of submissions pointed out that the lack of a specific global treaty on gender-based violence against women had important symbolic value and further indicated that a new treaty could have an important role in galvanizing implementation at the State level. That symbolic value and potential to act as a catalyst for change was**

[8] See also general recommendation No. 33, para. 37; and general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, para. 34.

[9] See also general recommendation No. 33, para. 16.

[10] See also Committee on Economic, Social and Cultural Rights, general comment No. 22 (2016) on the right to sexual and reproductive health.

[11] See also joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2014) on harmful practices.

particularly compelling in the broader Asia-Pacific and Middle East regions, which were the only ones that did not have a specific regional treaty on violence against women.

85. The Special Rapporteur believes that the lack of full incorporation and application of international norms at the domestic level, including the Convention and other instruments, is the main challenge faced in addressing gender-based violence against women. This problem should be more vigorously addressed by the different measures recommended in the present report, among which is the examination of the adequacy of the current legal framework. The Special Rapporteur believes that a global implementation plan on violence against women could be a proper response to address all initiatives and proposals contained in the numerous submissions received.

86. The Special Rapporteur highlights that, apart from the Committee, a variety of international and regional human rights bodies and independent experts are working on the issue of violence against women. These bodies have all developed a rich jurisprudence, general comments and recommendations relating to the right of women and girls not to be subjected to violence, which in certain circumstances may amount to torture or cruel, inhuman or degrading treatment, denial of the right to health and other human rights. There are regional treaties and treaty bodies looking specifically at gender-based violence in Africa, the Americas and Europe. There are also independent experts in Africa and the Americas. However, these instruments need more incorporation and implementation, including through sustained funding of expert monitoring mechanisms to carry out their work, to facilitate coordination and to share best practices, information and insights. This urgency to support existing good work is even more compelling given the high priority dedicated to the eradication of violence against women in the Sustainable Development Goals.

87. The mandate holder believes that the argument of a normative gap on violence against women at the international level does not take into account the coverage by the Convention of gender-based violence as a form of discrimination against women and the recent adoption of general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19 (1992) on violence against women. The Special Rapporteur highlights that the practice of States under the Convention has, explicitly or implicitly, expressed their acceptance of the Convention's interpretation of violence against women, without dissenting on its core contents, as reiterated also in general recommendation No. 35. Therefore, the acceptance of violence against women as a form of discrimination against women has been documented during the past 25 years in jurisprudence developed by the Committee connecting violence against women with other forms of discrimination.

88. The Special Rapporteur holds the view that the recent adoption of general recommendation No. 35 marks a significant contribution towards a better understanding and implementation of the legal framework of the Convention on gender-based violence against women.

89. While all options are on the table, the Special Rapporteur highlights that any initiatives need to be assessed according to whether they are likely to address the normative challenge at the national level of incorporating and implementing existing international obligations and ensuring a dynamic State response which includes the necessary resources and political will to create change.

90. It is also important to recall that the process for such a development would need to be carefully considered, making sure that existing standards are not undermined.

91. The Special Rapporteur supports the interpretation of violence against women as a form of discrimination against women and girls and a human rights violation. Therefore, the option of creating a separate treaty would expose the existing legal framework under the Convention on violence against women to the risk of isolating provisions aimed at addressing gender-based violence against women from the structural causes of discrimination against women.

92. At the same time, the mandate holder acknowledges that the current legal framework composed of the Convention, along with general recommendation Nos. 19 and 35 and jurisprudence, the Beijing Platform for Action, the Declaration on the Elimination of Discrimination against Women, Security Council resolution 1325 (2000) and regional women's rights instruments, is complex, fragmented and in some ways convoluted in its application, including with regard to its implementation at the regional and national levels.

93. In the Special Rapporteur's opinion, an optional protocol to the Convention is also an option which could be considered as a long-term solution, and which could aid implementation. Creative opportunities from other instruments could be integrated, such as cooperation with national implementing mechanisms (Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) and national coordinating bodies, and a role for national parliaments (as proposed in articles 7 and 10 of the Convention on Preventing and Combating Violence against Women and Domestic Violence).

94. The Special Rapporteur believes that, under Sustainable Development Goal 5, new energy and resources should be focused on bridging the incorporation and implementation gaps between international and national law and policy, including with regard to better use of existing global and regional mechanisms on violence against women, including data collection and indicators on gender-based violence against women, femicide, and shelters and protection orders.

95. The Rapporteur believes that an interesting option would be the establishment of an open-ended working group on addressing gender-based violence against women in law and policy, open to all States Members of the United Nations and aimed at strengthening the protection of women's human rights. The to-be-created working group would analyse the adequacy of the existing international framework on women's rights and gaps in its incorporation and implementation. It would also be entitled to suggest solutions, including considering, as appropriate, the feasibility of further instruments and implementation measures, with the support of the Secretary-General. The mandate of the Special Rapporteur would play an active role in guaranteeing that an approach based on women's human rights is provided within its work.

96. The Special Rapporteur makes the following specific recommendations:

(a) States should enhance cooperation between international, regional and national mechanisms addressing violence against women, including by improving information gathering on the current situation of gender-based violence against women;

(b) **Governments and civil society should start the process leading to a fifth United Nations World Conference on Women, with a focus on violence against women as a priority, and consider the possibility of formulating a global implementation action plan or guidelines on violence against women;**[12]

(c) **States should allocate adequate financial and human resources for the implementation of integrated legislation, policies, measures and programmes to prevent and combat gender-based violence against women, including appropriate financial and human resources for the related monitoring bodies;**

(d) **States should prioritize implementation of the Sustainable Development Goals, in particular Goal 5 (gender equality and empowerment of all women and girls), including by developing indicators on target 5.2 (elimination of violence against women) on femicide, shelters and protection orders, and support national plans to implement all of the Goals in a gender-responsive manner.**[13] **The Sustainable Development Goal process must not, however, derogate from the obligation of States to respect, protect and fulfil women's human rights in all fields of life, in accordance with existing international human rights law in customary law and treaty obligations. An independent monitoring mechanism should be integrated into this process;**

(e) **States should ratify without reservation the existing international and regional instruments addressing gender-based violence against women and properly implement them at the national level;**

(f) **States should repeal all provisions and procedures that are discriminatory against women and girls, and that thereby facilitate and allow for the toleration of any form of gender-based violence against them, including legislation justifying harmful practices against women,**[14] **but also abrogate or modify those gender-neutral laws and policies which may prevent women and girls from fully enjoying their human rights in both the private and public spheres;**

(g) **States should develop training sessions and awareness-raising campaigns, and capacity-building programmes, aimed at promoting an understanding of gender-based violence against women, including training sessions addressed to law enforcement officials dealing with violence against women, such as police officers, lawyers, judges, social workers and medical professionals;**

(h) **States should establish a "femicide watch" to collect, analyse and review data on gender-based violence at the national, regional and global levels and collect and publish annual data on the number of femicides. Each femicide should be carefully examined to identify any failure of protection, with a view to improving and further developing preventive measures. States should also increase their efforts to use all available global and regional women's human rights instruments and expert mechanisms to put in place effective systems to prevent and end femicide and gender-based violence against women and girls.**

97. **States, United Nations entities, independent mechanisms and other stakeholders should undertake to do the following:**

(a) **Establish institutional links and support cooperation on thematic issues between independent global and regional mechanisms on gender equality**

[12] www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21382&LangID=E.

[13] Outcome document of the sixtieth session of the Commission on the Status of Women.

[14] Following the guidance provided in general recommendation No. 33.

and violence against women, namely the Special Rapporteur on violence against women, the Committee on the Elimination of Discrimination against Women, the Working Group on the issue of discrimination against women in law and in practice, the Inter-American Commission on Human Rights Rapporteur on the rights of women, the group of experts of the Council of Europe on action against violence against women and domestic violence, the Special Rapporteur on the rights of women in Africa, the follow-up mechanism to the implementation of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children, through regular meetings and discussions on the implementation of the results of those meetings through the creation of a coherent and integrated approach, with a view to both ensuring that there is no fragmentation or inconsistency in recommendations and supporting effective and strong national and international mechanisms;

(b) Support the strengthening of cooperation between the Committee and the Special Rapporteur on violence against women, as envisaged in the founding resolutions of the mandate, through regular thematic meetings on violence against women, especially ways to implement general recommendation No. 35;

(c) Support the strengthening of cooperation of the Special Rapporteur on violence against women with other treaty bodies dealing with violence against women;

(d) Strengthen the cooperation of the Special Rapporteur on violence against women with the United Nations trust fund as envisaged in the trust fund founding resolution.

98. United Nations intergovernmental bodies should undertake to do the following:

(a) Organize each year during one of the sessions of the Human Rights Council a panel on violence against women to discuss the achievements of global and regional independent mechanisms dealing with such violence;

(b) Organize panel discussions on the implementation of the recommendations of the Committee on the Elimination of Discrimination against Women and of the Special Rapporteur on violence against women during the sessions of the Commission on the Status of Women;

(c) Include violence against women and access to criminal justice as regular items of the Commission on Crime Prevention and Criminal Justice;

(d) Include the participation of independent women's human rights mechanisms in the Sustainable Development Goal review process;

(e) Ensure stronger support of the wider United Nations system, including relevant agencies, for combating violence against women.

99. States should strengthen the implementation of general recommendation No. 35 and, by that means, test the need for a substantive optional protocol on violence against women or a mere procedural protocol along the lines of the Optional Protocol to the Convention against Torture.

100. States and civil society should consider the fifth United Nations World Conference on Women, with its focus on violence against women, as a useful opportunity to entrench a much-needed recognition of the scale and seriousness of violence against women, make a universal commitment to address such

violence, and impose State-specific obligations, a global road map and implementation plans on preventing and combating such violence.

101. **While deciding on the measures needed, States should focus on the implementation of existing standards, continue cooperating on ways to combat violence against women, including at the international level, and recognize that any solution should be multifaceted and may include the convening of an intergovernmental working group on violence against women.**

102. **In any case, the decision related to the necessity of any new instrument or a global action plan on violence against women should be assessed and discussed through proper inclusive consultations carried out by the States Members of the United Nations and the State parties to the Convention, with the participation of independent global and regional mechanisms, non-governmental organizations, national human rights institutions and all other stakeholders. The mandate of the Special Rapporteur stands ready to further contribute to such discussions.**

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Rights to freedom of peaceful assembly and of association

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Annalisa Ciampi, submitted in accordance with Human Rights Council resolution 32/32.

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Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association

Summary

At its thirty-fourth session, the Human Rights Council appointed Annalisa Ciampi as Special Rapporteur on the rights to freedom of peaceful assembly and of association; she formally took up her role on 1 May 2017.

In the present report, the Special Rapporteur outlines her vision of the mandate established by the Council in its resolution 15/21, building on the work of the previous mandate holder.

Contents

		Page
I.	Introduction	4
II.	Activities of the Special Rapporteur	4
III.	Factors shaping the vision of the mandate	5
	A. Mandate as a service	5
	B. Freedom of peaceful assembly and of association as fundamental rights	5
	C. Democracy and freedom of peaceful assembly and of association	6
	D. Development and freedom of peaceful assembly and of association	7
IV.	Contributions of the previous mandate holder	8
V.	Thematic priorities	12
	A. Use of force, including less lethal weapons, and management of assemblies	12
	B. Digital space, emerging technologies and human rights	13
	C. Professional associations, including the role of academic institutions	14
	D. Exercise of the rights to peacefully assemble and to associate at the international level, specifically in the context of multilateral institutions	14
	E. Good and promising practices that promote and protect the rights to freedom of peaceful assembly and of association	14
VI.	Working methods	15
	A. Visibility of the mandate and knowledge of the special procedures mechanisms	15
	B. Reports	15
	C. Country visits	15
	D. Communications and media statements	16
	E. Academic visits, consultations with stakeholders and other events	16
	F. Strategic litigation in national, regional and international courts	16
	G. Early warning, prevention and calls to the Human Rights Council, the Security Council and other bodies to respond to situations of emerging concern	17
	H. Coordination	17
VII.	Conclusion and recommendations	18

I. Introduction

1. In the present report, her first to the General Assembly and the first presented in her own right, the Special Rapporteur on the rights to freedom of peaceful assembly and of association outlines her vision of the mandate established by the Human Rights Council in its resolution 15/21 and renewed in its resolution 32/32.

2. The Special Rapporteur is grateful to the previous mandate holder, Maina Kiai, for the enormous amount of work carried out in the past six years of the mandate.

3. In section II, the Special Rapporteur provides an account of her activities since she took up her role on 1 May 2017. In section III, she outlines the factors that shape her vision. In section IV, she recaps and summarizes the thematic reports presented by the previous mandate holder, whose work constitutes the bedrock upon which she will build. In section V, she spells out the thematic priorities for the three years to come. A specific plan of action and the methodology of work are detailed in section VI. The conclusion and recommendations are outlined in section VII.

II. Activities of the Special Rapporteur

4. On 6 and 7 June 2017, the Special Rapporteur addressed the Human Rights Council at its thirty-fifth session, for the first time, briefly presenting the reports of her predecessor and outlining a few elements that would guide her mandate. Those elements included engaging with Member States, addressing the question of professional associations and continuing to use the traditional tools of the mandate effectively. It was stressed during the interactive dialogue that there were growing restrictions imposed on civil society and a shrinking of civic space worldwide. The Special Rapporteur concluded the discussion by pointing out that the main reason for the shrinking of civic space was the adoption of restrictive measures and practices by States and therefore called upon States to refrain from adopting such measures and practices.

5. On the margins of the session, the Special Rapporteur held various consultations, including with her predecessor and his team, civil society organizations and other relevant stakeholders, such as the International Labour Organization (ILO), to discuss issues falling under her mandate and to collect their views on the mandate and the way forward.

6. From 27 to 30 June 2017, the Special Rapporteur participated in the twenty-fourth annual meeting of special procedures mandate holders. On the margins of that meeting, she convened a follow-up consultation with non-governmental organizations, with the aim of collecting additional views on current and pressing issues and concerns pertaining to freedom of peaceful assembly and of association. She also held a number of bilateral meetings with permanent missions. She participated in a multi-stakeholder consultation on strengthening the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity, organized by the United Nations Educational, Scientific and Cultural Organization and the Office of the United Nations High Commissioner for Human Rights (OHCHR) and held on 29 June 2017. The aim of that consultation was to bring together key stakeholders to identify primary achievements, gaps and challenges in previous and existing work on the safety of journalists and to devise recommendations for future work in the context of the Plan of Action.

7. The Special Rapporteur also convened a consultation in Pietrasanta, Italy, on 5 and 6 July, with representatives of civil society organizations whose discussions have fed into the present report.

III. Factors shaping the vision of the mandate

8. The vision of the Special Rapporteur is influenced and shaped by a number of factors, outlined below, which will inform and guide her own work with regard to the mandate.

A. Mandate as a service

9. The mandate is a service, not a personal matter of the individual who happens to be the Special Rapporteur at a given time. Moreover, the mandate is not an end in itself but it is a means to a further end.

10. The Special Rapporteur is intended to be the eyes and the ears of the Human Rights Council on matters pertaining to freedom of peaceful assembly and of association that warrant the Council's attention. However, the ultimate beneficiary of the Special Rapporteur's work cannot be the Council alone.

11. The beneficiaries are and should be the people, as espoused in the Preamble of the Charter of the United Nations, which begins: "We the peoples of the United Nations". The beneficiaries must be civil society: civil society organizations such as non-governmental organizations, development and humanitarian actors, religious associations, political parties, trade unions, social movements, professional associations, academic institutions, and sports, leisure and other associations of all kinds. The beneficiaries must be the people who gather and meet in peaceful assemblies, in private or public space, offline or online, to protest or for any other peaceful purposes.

12. When the people and civil society benefit, States, international organizations and international society as a whole benefit, too.

13. The mandate holder is committed to using her mandate to ensure the full exercise of the rights to freedom of peaceful assembly and of association by all the peoples of the United Nations.

B. Freedom of peaceful assembly and of association as fundamental rights

14. The rights to freedom of peaceful assembly and of association are among the many rights on the list of international human rights; just as all human rights, they are universal, indivisible, interdependent and interrelated.

15. The rights to freedom of peaceful assembly and of association are fundamental rights that form the basis of the full enjoyment of other rights, as they enable the exercise of a number of civil, political, economic, cultural and social rights.

16. The rights to freedom of peaceful assembly and of association are not absolute, meaning that not only can they be temporarily derogated from in a state of emergency, but they can also be exceptionally interfered with under other circumstances. While they are human rights guaranteed to all, their exercise may be subject to certain restrictions. Such restrictions are permitted if they are necessary for a number of public purposes, including the protection of the rights and freedoms of others, as long as they are proportionate and provided for by law. Security and emergency laws, measures aimed at curtailing the financing of international terrorism, anti-money-laundering regulations and other limitations restrictive of civic space in the name of general public purposes, however, do not, as such, justify systematic violations of the freedom of peaceful assembly and of association.

17. Moreover, the rights to freedom of peaceful assembly and of association are fundamental human rights, not only for all functioning democracies, but also for autocratic Governments. A single variable such as freedom of peaceful assembly and of association can actually serve as a barometer for measuring the situation pertaining to, and the enjoyment of, human rights in any given country and a useful proxy for how open or closed countries and their national institutions are.

18. Successes and achievements of civil society in recent years have been thoroughly investigated and recorded (see A/HRC/35/28). They were, by and large, acknowledged, recognized and endorsed by delegations during the clustered interactive dialogue held by the Human Rights Council with the Special Rapporteur on 7 June 2017 (A/HRC/35/28, para. 4).[1] Yet, since the establishment of the mandate in October 2010, the voices of civil society have been restricted or silenced, if not eliminated, in every region across the globe. Mass surveillance, obstructive regulation of democratic space, including online, overly restrictive legislation to regulate association and limit the exercise of fundamental public freedoms, with frequent use of counter-terrorism legislation to curtail dissenting voices, and harassment of and violence against human rights defenders and ordinary people who exercise their right to express opinions in peaceful protests are all too common.

19. Against this background, the Special Rapporteur wishes to emphasize the mutually reinforcing relationship between freedom of peaceful assembly and of association on the one hand, and democracy and development on the other, combined with her willingness to contribute to an increase in global civic space.

C. Democracy and freedom of peaceful assembly and of association

20. Together with freedom of expression and other rights, freedom of peaceful assembly and of association lies at the core of any functioning democratic system. These rights are essential components of democracy, as they empower men and women to "express their political opinions, engage in literary and artistic pursuits and other cultural, economic and social activities, engage in religious observances or other beliefs, form and join trade unions and cooperatives, and elect leaders to represent their interests and hold them accountable" (Human Rights Council resolution 15/21, preamble).

21. The Human Rights Council has adopted a number of resolutions, notably since the Arab Spring, on the promotion and protection of human rights in the context of peaceful protest, in which it stressed that "peaceful protests should not be viewed as a threat" and encouraged all States "to engage in an open, inclusive and meaningful dialogue when dealing with peaceful protests and their causes" (see, for example, resolution 25/38).

22. While the freedom of peaceful assembly and the freedom of association are considered two separate rights (A/HRC/20/27, para. 4), it is essential today to consider how the two rights are closely interrelated and interdependent. The joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies emphasizes the importance of assemblies in developing democratic systems, fostering public participation and presenting alternative perspectives to established interests (A/HRC/31/66, paras. 5-6).

[1] A recording of the dialogue is available from http://webtv.un.org/meetings-events/watch/clustered-id-contd-sr-on-education-sr-on-peaceful-assembly-6th-meeting-35th-regular-session-human-rights-council-/5461810503001.

However, for assemblies, which are generally defined as "temporary" or "long-term" gatherings of people in private, public or online spaces (ibid., para. 10), to achieve their ultimate goals, individuals must be able to fully exercise their right to freedom of association, through which they organize collective action, engage constructively with stakeholders, including policymakers and legislators, and help to institutionalize the political, economic or social changes to which those participating in assemblies aspire. It is the combination of the right to freedom of peaceful assembly and the right to freedom of association that strengthens responsive democratic governance systems and ensures the full and meaningful exercise of the right to participate in public affairs, as expressed in article 25 of the International Covenant on Civil and Political Rights.

23. A State becomes stronger when it nurtures a strong civil society. The relationship between a strong State and a strong civil society is directly, not inversely, proportional. There is no trade-off between the two.

D. Development and freedom of peaceful assembly and of association

24. The intrinsic and inherent link between democracy and the rights to freedom of peaceful assembly and of association does not exhaust the importance of, nor does it fully testify to, the fundamental nature of those rights. Civil society contributes to development as much as it does to democracy.

25. In the Universal Declaration of Human Rights, human rights were recognized as the foundation of freedom, justice and peace. In the unanimously adopted Vienna Declaration and Programme of Action, democracy, development and respect for human rights and fundamental freedoms were evoked as interdependent and mutually reinforcing.

26. In the Declaration on the Right to Development, adopted by the General Assembly on 4 December 1986 in its resolution 41/128, the Assembly called for every member of society to be empowered to participate fully and freely in vital decisions. The Declaration and its principles formed the basis for the conceptualization of a human rights-based approach to development. In the statement of common understanding on human rights-based approaches to development cooperation and programming, adopted by the United Nations in 2003, that approach was outlined as follows:

(a) All programmes of development cooperation, policies and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments;

(b) Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process;

(c) Development cooperation contributes to the development of the capacities of "duty-bearers" to meet their obligations and/or of "rights-holders" to claim their rights.

27. The Human Rights Council has reaffirmed those principles through a number of resolutions. Most recently, on 23 June 2017, it adopted resolution 35/21 on the contribution of development to the enjoyment of all human rights. In the resolution, the Council recognized the common aspiration of the international community to build a shared future for human beings and affirmed that development contributed significantly to the enjoyment of all human rights. It called upon all countries to

realize people-centred development of the people, by the people and for the people, and called upon all States to enhance international cooperation and to spare no effort in promoting sustainable development, in particular while implementing the 2030 Agenda for Sustainable Development, as it was conducive to the overall enjoyment of human rights. The Council also welcomed further efforts to promote development initiatives with the aim of promoting partnerships, win-win outcomes and common development.

28. While the inclusion of the concept that development promotes human rights into the international human rights system is crucial, the Special Rapporteur stresses that a major shift in the global human rights conversation requires the recognition that the interaction between development and human rights is twofold. Development contributes to human rights, and the enjoyment of those rights promotes development. In that context, the use of public space, participation in public debate and the possibility of organizing and associating all contribute to expanding civil space within the framework of the Sustainable Development Goals, in particular Goal 16, which provides for peaceful, inclusive and just societies with effective, accountable and inclusive institutions. Inequalities, on the other hand, have a negative impact on the exercise of the rights to freedom of peaceful assembly and of association.

29. Business is often at the origin of violations of human rights, including the rights to freedom of peaceful assembly and of association. In this regard, the Special Rapporteur also wishes to emphasize the potentially positive role of business in defending human rights. A number of companies from various industry sectors are increasingly realizing that the protection of civic society organizations and individuals is not only right, but also in their interest.

30. The Special Rapporteur is committed both to ensuring accountability for business actors in line with the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework and to working together with existing networks with a view to identifying ways that businesses and society can benefit from increased support from the private sector, in partnership with Governments, to create positive and enabling operating environments characterized by good governance, respect for the rule of law and human rights, equality and diversity.

IV. Contributions of the previous mandate holder

31. For the past six years, the previous mandate holder brought extensive human rights experience, deep commitment and great energy to the mandate. In close consultations with key stakeholders, he very carefully identified a range of important issues as the focus of his thematic reports to both the Human Rights Council and the General Assembly.

32. In his first report to the Human Rights Council (A/HRC/20/27), highlighting best practices in promoting the rights to freedom of peaceful assembly and of association, he clarified that the right to freedom of peaceful assembly covered not only the right to hold and to participate in peaceful assemblies, but also the right to be protected from undue interference, and that it further protected those monitoring peaceful assemblies. As to the right to freedom of association, that ranged from the creation to the termination of an association and included the right to form and join an association, to operate freely and to be protected from undue interference, to access funding and resources and to take part in the conduct of public affairs. He further highlighted best practices worldwide that promoted and protected the rights to freedom of peaceful assembly and of association, covering issues such as the

definition of "peaceful assembly" and "association", the presumption in favour of allowing peaceful assemblies, the concept of notification versus authorization of peaceful assemblies, the right to be protected from undue interference during assemblies, building the human rights capacity of law enforcement, the rights of monitors and journalists in the context of peaceful assemblies, the right to form and join an association, including unregistered associations, the right to operate an association freely and be protected from undue interference, the right for associations to access funding and resources, the right to take part in public affairs, the termination, suspension and dissolution of associations and the right to an adequate remedy.

33. In his second report to the Human Rights Council (A/HRC/23/39), addressing civil society's right to seek, receive and use human, material and financial resources, he observed that restrictions on funding had become a major existential threat to associations across the world, as Governments increasingly used the financial noose as a way to silence them. He clarified that, under international law, freedom of association encompassed the right to seek, receive and use human, material and financial resources from domestic, foreign and international sources. He noted that States were obliged to facilitate, not restrict, access to funding so that associations could effectively take part in democratic and developmental processes, just as businesses and Governments do. A document outlining general principles on protecting civic space and the right to access resources, summarizing the key aspects of that right and their legal bases, was issued in May 2014.[2]

34. In his first report to the General Assembly (A/68/299), the previous mandate holder addressed concerns about the exercise of the rights to freedom of peaceful assembly and of association, documenting the countless threats to such freedoms in the context of elections. One of the most critical findings outlined in the report was that elections did not exist in a vacuum, and their quality could not be judged solely by what happened during the vote, but also by what happened before and after the elections. Another critical finding was that, "given the importance of the rights to freedom of peaceful assembly and of association in the context of elections, the threshold for imposing such restrictions should be higher than usual: the criteria of 'necessity in a democratic society' and 'proportionality' should be more difficult to meet during election time" (ibid., para. 25).

35. In his third report to the Human Rights Council (A/HRC/26/29), in which he assessed the threats against groups most at risk when exercising their rights to freedom of peaceful assembly and association, the previous mandate holder focused on the challenges facing groups that were often relegated to the margins of society, both in their daily lives and in the exercise of those rights. In the report, he highlighted the link between the denial of those rights and the marginalization of such groups and how that marginalization exacerbated their inability to effectively exercise their rights. Some of the groups considered to be most at risk were persons with disabilities; youth, including children; women; lesbian, gay, bisexual, transgender and intersex people; members of minority groups; indigenous peoples; internally displaced persons; and non-nationals, including refugees, asylum seekers and migrant workers. For the purpose of the report, the groups most at risk also included groups and individuals who were targeted not because of their identity, but because they actively lobbied for the rights of those most at risk of discrimination and retribution. He noted that human rights defenders, including journalists, trade unionists and environmental activists, faced considerable opposition, harassment, stigmatization and even physical attacks from State and non-State actors in many countries.

[2] Available from www.ohchr.org/Documents/Issues/FAssociation/GeneralPrinciples ProtectingCivicSpace.pdf.

36. In his second report to the General Assembly (A/69/365), he examined the exercise of the rights to peacefully assemble and to associate at the international level, specifically in the context of multilateral institutions and their impact on those rights. He observed that civil society was far too often excluded from international debates, with multilateral institutions commonly viewing peaceful assemblies, whether during global summits or when implementing a project, as posing a security threat; that the operations of many multilaterals lacked transparency; and that reprisals against human rights defenders who cooperated with multilaterals were common. He further examined obstacles to the exercise of assembly and association rights in the context of multilaterals, some erected by the entities themselves, and some by the States that comprised them. He also made extensive recommendations on what should be done to improve the situation.

37. In his fourth report to the Human Rights Council (A/HRC/29/25), on the rights to freedom of peaceful assembly and association in the context of natural resource exploitation, the previous mandate holder examined the role that those rights played in opening up space for genuine and effective participation across the spectrum of natural resource exploitation activities. He also examined how those rights helped to foster increased transparency and accountability, facilitate constructive dialogue and, ultimately, form the basis for people's ability to secure other substantive rights. In the report, he noted that the significance of civil society as a stakeholder in the context of natural resource exploitation was underestimated, misperceived and often denied by both States and businesses and that that was symptomatic of a growing disregard for a plurality of views, particularly those which championed non-economic values over economic ones. He argued that such disregard for civil society input was counterproductive and divisive and likely to contribute to an erosion of confidence in the world's prevailing economic system. He concluded that it was in the interest of both States and corporations to recognize actions by civil society groups, both in support of and against the entire decision-making chain in natural resource governance, as a legitimate exercise by those individuals and groups of their rights to freedom of peaceful assembly and of association.

38. In his third report to the General Assembly (A/70/266), he provided a comparative study on the treatment of businesses and associations by States worldwide, comparing the enabling environments created by States, multilateral organizations and other actors for businesses and associations and highlighting instances in which they were treated inequitably. He found that States and other actors often imposed more burdensome regulation on associations, both in law and in practice, with businesses receiving more favourable treatment. The net result was that, for businesses, the enabling environment, defined broadly as action or inaction by States and other actors to promote a particular non-State sector, was typically much better than it was for associations. In the report, he advocated "sectoral equity": a fair, transparent and impartial approach in which the regulation of each sector would be grounded in domestic and international law, standards and norms and where regulations would be clearly set forth in law, with minimum discretion given to State officials.

39. In his fifth report to the Human Rights Council (A/HRC/32/36), the previous mandate holder addressed the phenomenon of fundamentalism and its impact on the exercise of the rights to freedom of peaceful assembly and of association. While he stressed that the mere voluntary adherence to a fundamentalist belief system was not a human rights violation in and of itself, he recalled that, when holders of such beliefs sought to impose them in a way that controlled or restricted the rights of others who might have different views or backgrounds, they threatened the values of pluralism and broadmindedness that were core to democracy. The tipping point, for the purposes of the report, was when fundamentalist views formed the basis for

violations of the rights to freedom of peaceful assembly and of association. He also examined the positive role that those rights could play in preventing the spread of extremism and radicalization.

40. In his fourth report to the General Assembly (A/71/385), the previous mandate holder focused on the rights to freedom of peaceful assembly and of association in the workplace in the context of the new global economic order, in which the power of large multinational corporations had increased, while, at the same time, the power of States to regulate those business entities had eroded, if not, in some cases, having been voluntarily ceded in order to attract the businesses in question. He observed that the new global economic order had had a profound impact on workers' ability to exercise their rights to freedom of peaceful assembly and of association. He noted that the traditional tools for asserting labour rights, such as trade unions, strikes and collective bargaining, had been significantly weakened around the globe, and vast swathes of the world's labour force were unable to exercise their fundamental rights to associate or assemble and were without access to remedies when their rights were violated. He examined how and why that had happened, focusing on the most marginalized portions of the world's labour force, including global supply chain workers, informal workers, migrant workers and domestic workers. He found that, although States were under an international obligation to respect and promote workers' rights to freedom of peaceful assembly and of association, many were dismally failing at the task, with grave implications. Those rights were a critical tool in levelling the unequal relationship between workers and employers that, in turn, helped workers to correct abuses and gain access to fair wages, safe working conditions and a collective voice. Poor enforcement of those rights in the workplace could also exacerbate global inequality, poverty, violence and child and forced labour and directly contributed to problems such as trafficking in persons and slavery. He recommended obliterating the distinction between labour rights and human rights generally, as labour rights were human rights, and the ability to exercise those rights in the workplace was a prerequisite for workers to enjoy a broad range of economic, social, cultural, political and other rights.

41. In 2016, the previous mandate holder, together with the previous holder of the mandate on extrajudicial, summary or arbitrary executions, submitted a joint report to the Human Rights Council on the proper management of assemblies (A/HRC/31/66). In their report, they noted that, despite the increasingly prominent role that assemblies played, there remained a lack of clear understanding of the applicable international human rights law and standards. The report provided a compilation of practical recommendations, organized around 10 overarching principles for the proper management of assemblies, and a summary of the applicable international legal standards, followed by practical recommendations on how those principles should be implemented, with the aim of ensuring better protection of the various rights of those engaged in assemblies and associations. An implementation checklist entitled "10 principles for the proper management of assemblies", designed to allow civil society organizations to monitor the implementation of the recommendations outlined in the report, was also published in 2016.[3]

42. In his sixth and final thematic report to the Human Rights Council (A/HRC/35/28), the previous mandate holder addressed the role and achievements of civil society. In the report, he mapped and quantified the myriad ways in which civil society had improved societies globally in the past decade, by protecting civil and political rights, advancing development objectives, moving societies towards

[3] Available from http://www.ohchr.org/Documents/Issues/FAssociation/10PrinciplesProperManagementAssemblies.pdf.

freedom and equality, achieving and upholding peace, regulating corporate behaviour, protecting the environment, delivering essential services and advocating economic, social and cultural rights. The current mandate holder, who presented the report to the Council on 6 June 2017 (see para. 4 above), considers it to be the ideal springboard for the work ahead. She notes with satisfaction that the report received wide support from, and was generally endorsed by, delegations during the interactive dialogue at the thirty-fifth session of the Council.

43. Overall, the previous mandate holder brought great substance to the debate and made substantial contributions to identifying legal standards concerning the establishment, management and, most crucially, the financing of the various forms of civil society organizations and the management of assemblies.

44. In addition, eight country visits have been conducted since the inception of the mandate, to Georgia (A/HRC/20/27/Add.2), the United Kingdom of Great Britain and Northern Ireland (A/HRC/23/39/Add.1), Rwanda (A/HRC/26/29/Add.2), Oman (A/HRC/29/25/Add.1), Kazakhstan (A/HRC/29/25/Add.2), Chile (A/HRC/32/36/Add.1), the Republic of Korea (A/HRC/32/36/Add.2), the United Kingdom (A/HRC/35/28/Add.1, follow-up mission) and the United States of America (A/HRC/35/28/Add.2).

V. Thematic priorities

45. The current mandate holder intends to contribute to the development of international standards for the exercise of the rights to freedom of peaceful assembly and of association and to focus on their implementation or lack thereof. To that end, she will strive to ensure that every paragraph in her reports conveys a relevant piece of information for States, civil society organizations and all relevant stakeholders. As mandated by the Human Rights Council in its resolution 15/21 (para. 5 (d)), she will integrate a gender perspective throughout her work.

A. Use of force, including less lethal weapons, and management of assemblies

46. The first thematic report to the Human Rights Council, in 2018, will be focused on the use of force, including less lethal weapons, and the management of assemblies, building upon the joint report on the proper management of assemblies presented in 2016 (see paras. 22 and 41 above), pursuant to Council resolution 25/38. In addition to following up on the compilation of practical recommendations for the proper management of assemblies provided in the joint report, the Special Rapporteur will tackle current and emerging issues, including:

(a) The distinction between situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, and cases of armed conflicts not of an international character. The latter trigger the application of article 3 common to the Geneva Conventions relating to the protection of victims of international armed conflicts and the application of the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts. In that respect, the Special Rapporteur will discuss the principle that international humanitarian law does not apply to the exclusion of fundamental human rights law, but fully complements it;

(b) The militarization of police and other law enforcement officials. In this regard, the Special Rapporteur will consider whether the rules on the use of force

need to be the same when a State resorts to deploying military and armed forces in the policing of assemblies;

(c) United Nations peacekeepers and the managing of assemblies. The distinction between civilian police, military police and policing in the context of peacekeeping missions may also require review to determine whether the legal framework for each of those situations is different;

(d) Private security contractors and the managing of assemblies. A restatement of the legal framework is equally needed for guiding both countries and assemblies that engage private sector contractors;

(e) Less lethal weapons. Among the questions to be dealt with in this context are whether the binary separation of lethal and non-lethal weapons should be abandoned or retained and whether and how the use of less lethal weapons, which can result in risk to life when improperly deployed, should be restricted to law enforcement agents and be strictly regulated;

(f) New weapons technologies, including unmanned systems. The Special Rapporteur will explore the challenges and opportunities of new technologies from the perspective of the rights to freedom of peaceful assembly and of association.

B. Digital space, emerging technologies and human rights

47. Another thematic priority is the exercise of the rights to freedom of peaceful association and of association online.

48. The rapid pace of technological development enables individuals all over the world to use information and communications technology and, at the same time, enhances the capacity of Governments, business enterprises and individuals to undertake surveillance, interception and data collection, which may violate or abuse human rights. It is generally recognized that the same rights that people have offline must also be protected online, including the rights to freedom of peaceful assembly and of association (see, for example, Human Rights Council resolution 34/7). However, Internet shutdowns have emerged as a popular means of information control. Government surveillance continues to intensify worldwide, jeopardizing the privacy and security of millions. Net neutrality, the long-held premise that all Internet data should be treated equally and without undue interference, has come under attack (see A/HRC/35/22).

49. The rights to freedom of assembly and of association in the digital sphere are increasingly the subject of restrictive laws and policies. There is a need, therefore, to discuss them in view of the challenges of the digital age and to explore the connection between those rights, specifically, and new technologies.

50. The Special Rapporteur will examine how Governments are increasingly targeting social networks and online communities, in other words, associational activities occurring on the Internet, and will argue that many of the targeted groups are protected "associations" under international law. In this context, a particular focus is warranted on the legal protection of "informal" associations online. The distinction is also to be highlighted between limitations on the use of the Internet that amount to a violation of the freedom of association online and those impinging upon the exercise of the right to freedom of assembly offline.

C. Professional associations, including the role of academic institutions

51. The Special Rapporteur intends to respond to the invitation of the Human Rights Council, pursuant to paragraph 4 of its resolution 32/32, the most recent resolution renewing the mandate, "to consider addressing, in his or her future reporting, the topic of professional associations, including the role of professional associations in the promotion and protection of all human rights, the realization of development efforts and building and maintaining a democratic society, and also including how States and other relevant stakeholders may promote, create and maintain conditions conducive to the development and activities of professional associations".

52. In that context, constraints imposed on independent universities and other academic institutions are an issue of increasing concern in a number of countries. The Special Rapporteur will argue, inter alia, that academic freedom is one of the basic forms through which freedom of association manifests itself and which lies at the core of any functioning democratic system.

D. Exercise of the rights to peacefully assemble and to associate at the international level, specifically in the context of multilateral institutions

53. A further topic of focus is the exercise of the rights to peacefully assemble and to associate at the international level, specifically in the context of multilateral institutions.

54. In this regard, of particular concern to the Special Rapporteur is the question of the consultative status of non-governmental organizations with the Economic and Social Council and the process governing their accreditation with international organizations other than the United Nations.

55. That thematic priority will be developed in follow-up to the aforementioned report concerning multilateral institutions and their effects on assembly and association rights (see para. 36 above), but also as part of a larger, in-depth study on the patterns of multilevel governance and the dynamics of interactions and interrelations between domestic politics and the international system.

E. Good and promising practices that promote and protect the rights to freedom of peaceful assembly and of association

56. Highlighting good and promising practices worldwide that promote and protect the rights to freedom of peaceful assembly and of association remains today one of the core human rights functions of the mandate, according to the relevant Human Rights Council resolutions. Over the course of her tenure, the Special Rapporteur will continue to assess such practices and endeavour to measure their impact, if any, as well as developments subsequent to the first report of the previous mandate holder to the Council (see para. 32 above).

57. The above thematic priorities are not set in stone, but will be updated by the Special Rapporteur as she encounters new challenges and concerns and receives suggestions as to other topics for her future reports.

VI. Working methods

58. As a consequence of, and in line with, the vision outlined in section III above, the present section details the Special Rapporteur's specific plan of action and the methodology of her work.

59. Considering the wealth of thematic research and recommendations produced in the first six years of the mandate, it is of utmost importance for the Special Rapporteur to increase the visibility of and disseminate this work, together with her future work, as broadly and widely as possible, so that it is known and used both internationally and at the national level to advance the rights to freedom of peaceful assembly and of association.

60. Another defining feature of her work will be strategic litigation in national, regional and international courts. The Special Rapporteur considers that litigating in cases that raise issues of freedom of peaceful association and of assembly before national, regional and international courts not only fully complements the advocacy and policy work associated with her mandate, but also will be key to building State practice, alongside and in addition to thematic reports, country visits, communications and awareness-raising.

61. In the following paragraphs, the Special Rapporteur details how she intends to exploit the full potential of the tools within the purview of special procedures mandate holders, in addition to developing new, innovative tools.

A. Visibility of the mandate and knowledge of the special procedures mechanisms

62. For the purpose of enhancing the visibility of her mandate, the Special Rapporteur intends to strengthen the content of the mandate website. She also intends to develop additional user-friendly tools to help the general public to better understand the findings and recommendations.

B. Reports

63. The Special Rapporteur considers reports, especially thematic reports, to be of the utmost importance, not merely rhetorical exercises. Thematic reports are soft law instruments whereby mandate holders contribute to the effectiveness and progressive development of international law. For thematic reports to be relevant and not dead letters, they need to be firmly based on State practice and on the practice of other relevant international actors. To that end, the Special Rapporteur will seek the views of a broad range of diverse voices from all relevant stakeholders, including regional and subregional mechanisms. This will be done, inter alia, through calls for submissions and consultations.

C. Country visits

64. A total of 117 Member States and one non-member observer State have extended a standing invitation to thematic special procedures mandate holders. The Special Rapporteur will work in close cooperation with the Working Group on the Universal Periodic Review to ensure that all Member States extend a standing invitation to mandate holders. She will also endeavour to ensure that each standing invitation corresponds to an actual request for a country visit by the mandate holder.

65. A number of requests have already been sent to Member States, so that an invitation can be extended to the Special Rapporteur.[4] She will reiterate those requests. She will also ensure that all Member States are given an opportunity to cooperate with her and thereby to engage in the work of the Human Rights Council, including States that have thus far failed, or have not been given the opportunity, to do so.

D. Communications and media statements

66. Communications and press releases are formidable tools in the hands of mandate holders. The Special Rapporteur intends to continue to use communications, in the form of letters of allegation and urgent appeal letters, to bring to the attention of States and the international community alleged violations of the rights to freedom of peaceful assembly and of association with regard to individual cases and practices, as well as draft legislation and policies, which may restrict those rights in ways incompatible with international human rights norms and standards.

67. In the first few months of her work, she has already engaged in fruitful discussions with other relevant mandate holders on how to streamline communications and make them more effective. She will pay particular attention to the follow-up to her communications.

68. The media will be accessed and used whenever it is truly believed that drawing public attention to specific situations has a reasonable prospect of either improving the promotion and protection of the freedom of peaceful assembly and of association for the people on the ground or of preventing their violation.

E. Academic visits, consultations with stakeholders and other events

69. The Special Rapporteur will continue to cooperate with civil society and non-governmental organizations that have been working closely with the previous mandate holder, with a view to deepening and further developing existing partnerships. Efforts have already been made to open new channels of cooperation with other international, regional, national and local actors, including academic and research organizations, business networks and numerous other stakeholders.

F. Strategic litigation in national, regional and international courts

70. In the view of the Special Rapporteur, litigating in national, regional and international courts is essential to building international practice, which is exactly the practice that is needed to contribute to the emergence and definition of standards, the assessment of compliance therewith and the promotion of their implementation. She will therefore strive to participate in litigation, mainly, but not exclusively, as amicus curiae, legal expert and third party intervenor, in cases where the rights to freedom of peaceful association and of assembly are at stake.

71. Therefore, and as part of her working methods, the Special Rapporteur sees it as part of her duty to take part in strategic litigation cases before national, regional and international courts where issues relating to freedom of peaceful association and of assembly come to the fore.

[4] See the web page on country visits, which contains lists of requests sent, invitations received and visits conducted by the Special Rapporteur, available from www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/CountryVisits.aspx.

72. Accordingly, she is seeking engagement for litigation. In order to raise awareness among relevant stakeholders and the public at large, the Special Rapporteur seeks the cooperation of professional associations, non-governmental organizations and their networks, as well as other relevant stakeholders and any other parties who have knowledge of cases involving assembly and association issues. A call for submission to that effect can be found on the mandate website.[5]

73. Moreover, while various professional associations and non-governmental organizations will be able and willing to provide support on a case-by-case basis, the Special Rapporteur seeks specialized human resources to establish a legal clinic to provide the legal research and drafting services needed for the preparatory work for the actual filing of amicus curiae briefings and expert opinions.

74. Information on activities carried out in this context will also be made available through the Special Rapporteur's website.

G. Early warning, prevention and calls to the Human Rights Council, the Security Council and other bodies to respond to situations of emerging concern

75. The Special Rapporteur is aware of her responsibility as a mandate holder vis-à-vis the Human Rights Council in determining whether and how the Council should respond to a situation of concern in accordance with objective and human rights-based criteria such as those elaborated in joint statements delivered at the Council, for example, those made by Ireland at its thirty-second session, by Maldives at its twentieth session and, most recently, by the Netherlands at its thirty-fifth. That responsibility is one that she takes very seriously when she recommends that the Council consider action to prevent, respond to or address violations and to assist in the de-escalation of a situation of concern.

76. More generally, her mandate has an important prevention and early warning role to play in the discharge of the responsibility to protect, as it is uniquely placed to collect a wealth of information on issues linked to the freedom of peaceful assembly and of association, including gaps in protection, swiftly deteriorating situations and the scale, the nature and patterns of violations. The Special Rapporteur will, when necessary, call the attention of the relevant bodies, including the Security Council, to such situations and request that they address, and take immediate action in response to, the risks and violations identified.

H. Coordination

77. The Special Rapporteur will continue to work with the Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders, with whom there already exists a well-established pattern of close cooperation. At the same time, she will engage with other relevant mandate holders with a view to coordinating efforts, while avoiding overlapping and duplication of work.

78. Expanding civic space is part of the global vision of OHCHR and is likely to remain so for the coming four years (2018-2021). She will, therefore, work closely with the Working Group on the Universal Periodic Review, treaty bodies, other Human Rights Council mechanisms and the United Nations system in general to

[5] See www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/StrategicLitigationNational RegionalInternationalCourts.aspx.

contribute to an increase in global civic space, the creation of a safe and enabling environment for civil society and the promotion and protection of the rights to freedom of peaceful assembly and of association worldwide.

79. The Special Rapporteur will cooperate with international organizations both inside and outside the United Nations system, in particular ILO, while being mindful of paragraph 5 (g) of Human Rights Council resolution 15/21, according to which her tasks include undertaking activities "such that the present mandate will not include those matters of specific competence of the International Labour Organization and its specialized supervisory mechanisms and procedures with respect to employers' and workers' rights to freedom of association, with a view to avoiding any duplication".

80. Consultation and coordination with regional human rights organizations worldwide and national human rights mechanisms are equally essential to the success of the mandate.

81. Lastly, but not least importantly, the support and collaboration of Member States remain key for any effort by the Special Rapporteur to make a difference. The Special Rapporteur restates her commitment to engaging in constructive dialogue with government representatives and to strengthening their engagement with the Human Rights Council and its mechanisms, including but in no way limited to, the Governments that have traditionally supported the mandate.

VII. Conclusion and recommendations

82. **This section contains a very simple, straightforward conclusion about what remains to be done by an independent expert, considering the numerous guiding principles and recommendations that have already been put forward in this area.**

83. **The success of the mandate on the rights to freedom of peaceful assembly and of association, just as that of any other mandate, cannot be measured in terms of resolutions adopted, reports presented, dialogues held or initiatives promoted.**

84. **The mandate presents a unique opportunity and challenge to explore and identify specific solutions and to mobilize public opinion and support in order to promote and protect civic space both nationally and globally. The Special Rapporteur will seek out and provide for such opportunities and challenges, to the very best of her knowledge, ability and future efforts.**

85. **The Special Rapporteur recommends that States and all international actors and relevant stakeholders make full use of the mandate. The mandate is a service, and the rights to freedom of peaceful assembly and of association are essential for democracy and constitute an indispensable condition for sustainable development.**